

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JUAN FABIAN CHAVEZ,

Plaintiff,

vs.

No. CIV 11-1008 JB/LAM

BOARD OF COUNTY COMMISSIONERS
OF SIERRA COUNTY,
SIERRA COUNTY DETENTION CENTER,
SUPERVISOR DETENTION OFFICER JOHN DOE,
MEDICAL DETENTION OFFICER DAVID ESTAVILLO,
DETENTION OFFICER JOHN DOE, and
DETENTION OFFICER SGT. C. CHAVEZ,
each officer individually and
each in their official capacities,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Defendants' Motion to Stay Discovery and Points and Authorities in Support Thereof, filed February 21, 2012 (Doc. 22) ("Motion to Stay"). The Court held a hearing on May 3, 2012. The primary issue is whether the Court should stay discovery in this case in light of the Defendants' assertions of qualified immunity. Because Plaintiff Juan Fabian Chavez does not oppose the Motion to Stay, the Court will grant the Motion to Stay. Consequently, the Court will stay all discovery in this matter until the Court renders its decision on the Defendant's Motion to Dismiss, filed February 7, 2012 (Doc. 16) ("Motion to Dismiss").

On August 22, 2011, Chavez filed his Civil Complaint for Damages in the Seventh Judicial District Court, County of Socorro, State of New Mexico. See Doc. 1-1 ("Complaint"). He asserts various causes of action against the Defendants, including: (i) Count I - Violation of 42 U.S.C. § 1983 for Failure to Provide Medical Treatment to an Inmate based on an alleged failure to provide

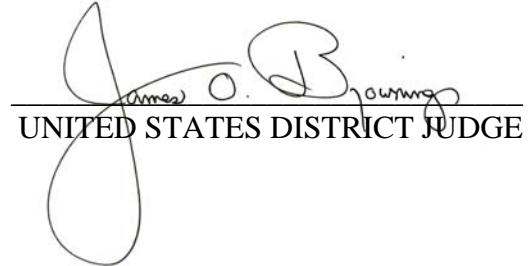
medication for sugar diabetes; (ii) Count II - Violation of 42 U.S.C. § 1983 for Failure to Provide Medical Treatment to an Inmate based on an alleged failure to provide medical treatment for Chavez' ankle and shoulder injuries; (iii) Count III - New Mexico State Tort Claim for negligence; and (iv) Count IV - Spoliation of Evidence. See Complaint at 9-11. On November 14, 2011, the Defendants filed their Notice of Removal to remove this case to federal court. See Notice of Removal at 1 (Doc. 1).

On February 21, 2012, the Defendants filed their Motion to Stay based on qualified immunity. See Doc. 22. They ask the Court to stay discovery until the Court rules on their Motion to Dismiss. See Motion to Stay at 1. Chavez did not file a written response to the Motion to Stay. D.N.M.LR-Civ. 7.1(b) provides: "The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion." D.N.M.LR-Civ. 7.1(b). At the hearing on May 3, 2012, Chavez clarified that he does not oppose the Motion to Stay. See Transcript of Hearing at 2:15-3:5 (taken May 3, 2012)(Court, Coronado)(“Tr.”).¹ Consequently, the Court will grant the Motion to Stay and will stay discovery until the Court rules on the Defendants' Motion to Dismiss. See Todd v. Montoya, No. 10-0106, 2011 WL 5238900, at *3 (Oct. 4, 2011)(Browning, J.)(“Qualified immunity is ‘an entitlement not to stand trial or face the other burdens of litigation.’” (quoting Mitchell v. Forsyth, 472 U.S. 511, 526 (1985)); Smith v. Kenny, 678 F.Supp.2d 1093, 1107 (D.N.M. 2009)(Browning, J.)(“If a reasonable person could have believed that the actions were lawful, ‘defendants are entitled to dismissal before discovery.’” (quoting Workman v. Jordan, 958 F.2d 332, 336 (10th Cir.1992)).

IT IS ORDERED that the Defendants' Motion to Stay Discovery and Points and Authorities

¹The Court's citations to the transcript of the hearing refer to the court reporter's original, unedited version. Any final transcript may contain slightly different page and/or line numbers.

in Support Thereof, filed February 21, 2012 (Doc. 22), is granted. The Court will stay all discovery in this case until the Court renders its decision on the Defendant's Motion to Dismiss, filed February 7, 2012 (Doc. 16).



UNITED STATES DISTRICT JUDGE

Counsel:

Jose R. Coronado
Las Cruces, New Mexico

-- and --

G. Greg Valdez
Las Cruces, New Mexico

Attorneys for the Plaintiff

Michael J. Thomas
Law Office of Michael J. Thomas, LLC
Las Cruces, New Mexico

-- and --

Raul A. Carrillo , Jr.
Daniel D. James
Steven L. Lovett
Carrillo Law Firm
Las Cruces, New Mexico

Attorneys for the Defendants